

United States Postal Service

§ 962.21

himself at any time during the proceeding. In the event a Reviewing Official or Presiding Officer withdraws from a hearing, the proceeding shall be stayed until the assignment of a new Reviewing Official or Presiding Officer.

§ 962.17 Ex parte communications.

Communications between a Presiding Officer and a party shall not be made on any matter in issue unless on notice and opportunity for all parties to participate. This prohibition does not apply to procedural matters. A memorandum of any communication between the Presiding Officer and a party shall be transmitted by the Presiding Officer to all parties.

§ 962.18 Post-hearing briefs.

Post-hearing briefs and reply briefs may be submitted upon such terms as established by the Presiding Officer at the conclusion of the hearing.

§ 962.19 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Presiding Officer orders otherwise. Transcripts or copies of the proceedings may be obtained by the parties at such rates as may be fixed by contract between the reporter and the Postal Service.

§ 962.20 Initial decision.

(a) After the conclusion of the hearing, and the receipt of briefs, if any, from the parties, the Presiding Officer shall issue a written initial decision, including his or her findings and determinations. Such decision shall include the findings of fact and conclusions of law which the Presiding Officer relied upon in determining whether the Respondent is liable under 31 U.S.C. 3802, and, if liability is found, shall set forth the amount of any penalties and assessments imposed.

(b) The Presiding Officer shall promptly send to each party a copy of his or her initial decision, and a statement describing the right of any person determined to be liable under 31 U.S.C. 3802, to appeal, in accordance with § 962.21, the decision of the Presiding Officer to the Judicial Officer.

(c) Unless the Respondent appeals the Presiding Officer's initial decision,

such decision, including the findings and determinations, is final.

§ 962.21 Appeal of initial decision to judicial officer.

(a) *Notice of appeal and supporting brief.* (1) A Respondent may appeal an adverse initial decision by filing, within 30 days after the Presiding Officer issues an initial decision, a Notice of Appeal with the Recorder. The Judicial Officer may extend the filing period if the Respondent files a request for an extension within the initial 30-day period and demonstrates good cause for such extension.

(2) The Respondent's Notice of Appeal must be accompanied by a written brief specifying the Respondent's exceptions, and any reasons for such exceptions, to the Presiding Officer's initial decision.

(3) Within 30 days of receiving the Respondent's brief, the Reviewing Official may file with the Judicial Officer a response to the Respondent's specified exceptions to the Presiding Officer's initial decision.

(b) *Form of review.* (1) Review by the Judicial Officer will be based entirely on the record and written submissions.

(2) The Judicial Officer may affirm, reduce, reverse, or remand any penalty or assessment determined by the Presiding Officer.

(3) The Judicial Officer shall not consider any objection that was not raised in the hearing unless the interested party demonstrates that the failure to raise the objection before the Presiding Officer was caused by extraordinary circumstances.

(4) If any party demonstrates to the satisfaction of the Judicial Officer that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence, the Judicial Officer shall remand the matter to the Presiding Officer for consideration of such additional evidence.

(c) *Decision of judicial officer.* (1) The Judicial Officer shall promptly serve each party to the appeal with a copy of his decision and a statement describing the right to judicial review under 31 U.S.C. 3805 of any Respondent determined to be liable under 31 U.S.C. 3802.